IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Crl.MC.No. 3435 of 2007()

CRIME NO.219/07 OF VELLAMUNDA POLICE STATION

PETITIONER:

P.V. GEORGE, S/O. VAREED,
PALISSERY HOUSE, PULINCHAL, MANANTHAVADY,
VELLAMUNDA P.O., WAYANADU DISTRICT, PERMANENTLY
SETTLED AT KALADY P.O., ERNAKULAM DISTRICT.

BY ADV. SMT.P.V.KOCHUTHRESIA

RESPONDENTS:

C.I. OF POLICE,
VELLAMUNDA POLICE STATION, VELLAMUNDA.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3435 of 2007

Dated this the 15th day of November 2007

O R D E R

The petitioner is arrayed as an accused in a crime registered under Sections 6 and 9 of the Explosives Act and Section 5 of the Explosives Substances Act. The petitioner had earlier come before this court with a prayer for anticipatory bail. That petition was dismissed with the observation that the petitioner can surrender before the learned Magistrate and seek regular bail. The petitioner has not surrendered before the learned Magistrate so far. The petitioner apprehends that if he surrenders, he will be remanded to custody. He, therefore, has come to this court with this petition under Section 482 Cr.P.C. The prayer is that the F.I.R may be quashed invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C.

2. What is the reason? The learned counsel for the petitioner first of all submits that the article recovered does not fall within the purview of the Explosives Substances Act. At the moment and with the available materials, such a conclusion of

fact cannot possibly be reached by this court. Secondly, it is contended that the shed, from which recovery is allegedly made, though it belongs to the petitioner was not in the occupation of the petitioner. The same had been let out to others prior to the seizure. The petitioner places reliance on some agreement allegedly executed by him in favour of such persons. The correctness of that contention cannot also be decided by this court in this proceedings under Section 482 Cr.P.C. Such dispute regarding facts cannot, obviously be attempted to be resolved in proceedings under Section 482 Cr.P.C. Lastly and finally, it is submitted that there may be a positive direction to the learned Magistrate to consider the bail application and grant bail notwithstanding the fact that a non-bailable offence is also alleged. It is certainly for the learned Magistrate to consider the application for regular bail on merits. It is trite that the mere fact that the offence is non-bailable does not ipso facto take away the jurisdiction of the learned Magistrate under Section 437 Cr.P.C to consider the bail application on merits.

3. It is for the petitioner to surrender before the learned Magistrate and argue before the learned Magistrate that

notwithstanding the fact that the offence is non-bailable, bail can be granted in the circumstances under Section 437 Cr.P.C. Decision on that question must be taken by the learned Magistrate and no more specific observations or directions are necessary from this court.

4. It follows that this petition under Section 482 Cr.P.C deserves to be dismissed. I do so with the above observations.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007